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No. 81-_____

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1981

AMBASSADOR COLLEGE,

Petitioner,

v.

SALLY J. GEOTZKE, etc., et al.,

Respondents.

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

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QUESTION PRESENTED

Do the first amendment freedoms of religion and associational privacy offer any protection in civil litigation to a church-related college from compulsory disclosure of the identity of its contributors, its income, and salaries paid to officers and trustees where the litigation involves a purely secular dispute?

PARTIES TO THE PROCEEDING

The parties to the proceeding in the United States Court of Appeals for the Eleventh Circuit were as follows:

Petitioner: Ambassador College, a non-profit California corporation which was founded, endowed and is supported by, and trains the ministry of the Worldwide Church of God.

Respondants: Sally J. Geotzke; Honorable Hardy Gregory, Jr.; Honorable

Audrey B. Jordan; and the Superior Court of Ben Hill County, Georgia.

Neenah Bond
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IN THE

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No. 81-.....

AMBASSADOR COLLEGE,

Petitioner,

v.

SALLY J. GEOTZKE, etc., et al.,

Respondents.

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

Ambassador College respectfully petitions for a writ of certiorari to review the judgment of the United States

Court of Appeals for the Eleventh Circuit in the above-entitled case.

OPINIONS BELOW

The Opinion of the United States Court of Appeals for the Eleventh Circuit is reported in 675 F.2d 662 (11 Cir. 1982).

JURISDICTION

The judgment of the United States Court of Appeals for the Eleventh Circuit was entered on May 6, 1982. The order of the United States Court of Appeals for the Eleventh Circuit denying a timely petition for rehearing en banc was entered on June 4, 1982. The Jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

U. S. Const. amend. I: "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; or abridging the freedom of speech . . . or the right of the people peaceably to assemble . . ."

U. S. Const. amend. XIV, §1: ". . . nor shall any state deprive any person of life, liberty or property without due process of law.

STATEMENT OF THE CASE

On September 8, 1978, Sally J. Geotzke brought an action against Ambassador College and two of its trustees in the Superior Court of Ben Hill County, Georgia seeking to cancel and have set aside certain deeds to real estate executed by her mother, Mrs. Shaffer, to the College upon the grounds

of mental incapacity, undue influence and fraudulent misrepresentations.

Simultaneously with the filing of her complaint, Mrs. Geotzke filed seventeen interrogatories and six requests for production of documents to which Ambassador College timely filed answers and objections. The College's objections were based on its constitutional rights of free exercise of religion and freedom of association and privacy.

The trial court sustained some of the College's objections, but <u>without any finding of a compelling interest</u> justifying the infringement of the College's constitutional right to resist disclosure of the information requested, entered an order requiring the College to produce the following information:

(1) The names and information of persons in Georgia who have conveyed property by deed or trust agreement

to Ambassador College, or have executed a will devising property to Ambassador College.

(2) The amount of annual compensation paid to officers, directors and members of the board of trustees of Ambassador College and the Worldwide Church of God.

(3) The gross revenues of Ambassador College for the years 1974-1977.

(4) The compensation paid to Herbert W. Armstrong by Ambassador College and the Worldwide Church of God for the years 1974-1977.

Ambassador College filed a motion requesting that the trial court frame a protective order specifying the terms and conditions upon which discovery could proceed and relieving it from revealing matters protected against disclosure by the first amendment. The

College also requested a certificate of immediate review to appeal any orders requiring it to respond to the above-discovery requests to which it objected on constitutional grounds. Neither the motion for protective order nor the request for an interlocutory appeal were ever passed upon by the trial court.

Ambassador College maintained its right, absent some showing of compelling necessity, to refuse to answer this discovery on constitutional grounds, whereupon Mrs. Geotzke moved for impositions of sanctions, including dismissal of Ambassador College's answer and judgment in her favor.

The trial court entered an order finding that Ambassador College had willfully failed and refused to comply with the court's previous order requiring the College to produce the information set forth above and ordered

that Mrs. Geotzke have judgment against the College for the relief prayed for in her complaint unless answers and productions of documents were forthcoming within nine days.

The College continued to assert its constitutional rights to refuse to comply with the discovery order absent a showing of necessity by Ms. Geotzke and again sought a certificate of immediate review. This request was summarily denied and on April 10, 1979, judgment was granted to Mrs. Geotzke providing the relief sought in her complaint setting aside and cancelling the deeds in question as a cloud on the title to the real property in dispute.

Ambassador College then appealed to the Supreme Court of Georgia and by brief and oral argument urged that Court to hear its constitutional objections to the discovery sought of it by Mrs.

Geotzke. However, and as specifically recognized by the Eleventh Circuit in its opinion below:

> "[T]he Georgia court did not rule on Ambassador College's constitutional claim, rather it affirmed on the basis of the Georgia statute (Ga. Code Ann. § 81A-126) dealing with the relevancy of information sought in discovery."

Ambassador College v. Geotzke, 675 F.2d 662, 663 (11 Cir. 1982).

This Court denied a petition for a writ of certiorari. Ambassador College v. Geotzke, 444 U.S. 1079, 100 S.Ct. 1029, 62 L.Ed.2d 762 (1980).

Ambassador College next brought a civil rights action in the United States District Court for the Middle District of Georgia, against Respondents Sally J. Geotzke, Honorable Hardy Gregory, Jr., Honorable Aubrey D. Jordan and the Superior Court of Ben Hill County, Georgia, under § 1 of the Civil Rights Act of 1871, 42 U.S.C. § 1983. In its

complaint Ambassador College sought a declaratory judgment that the dismissal order entered against the College in the Ben Hill Superior Court action was unconstitutional as depriving the College of its rights protected by the first and fourteenth amendments and as depriving the College of its property without due process of law. Ambassador College sought a permanent injunction restraining respondents from enforcing the operation of this judgment and from taking any further actions or proceedings with respect to the property which is the subject matter of the judgment.

Upon motions by all respondents, the United States District Court entered an order on May 30, 1980 dismissing the College's complaint on the grounds that it did not have subject-matter jurisdiction. An appeal followed.

The Eleventh Circuit affirmed the district court's dismissal of the action holding that Ambassador College had presented no colorable first amendment claim. The Eleventh Circuit therefore saw no need to consider whether the district court had jurisdiction to determine if the Superior Court of Ben Hill County, Georgia denied the College a due process right by refusing to address its constitutional claims.

REASONS FOR GRANTING THE WRIT

I.

The Decision Below Conflicts With Fundamental First Amendment Principles Enunciated by This Court and Decisions of Lower Courts Applying Those Principles

It is important to note at the outset that the obvious religious standing of Ambassador College as the type of organization entitled to the

protection afforded individuals and churches by the Constitutions of the State of Georgia and the United States is not questioned, nor could it be.

This Court has clearly and consistently recognized a right of association for the purpose of seeking goals independently protected by the first amendment. Buckley v. Valeo, 424 U.S. 1 (1976); Cousins v. Wigoda, 419 U.S. 477 (1975); NAACP v. Button, 371 U.S. 415 (1963); NAACP v. Alabama, 357 U.S. 449 (1958). A particularly well-established instance of the right of associational freedom has been the recognition of the integrity and autonomy of religious associations. Kedroff v. St. Nicholas Cathedral, 344 U.S. 95 (1952); Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976).

Additionally, it is undisputed that the discovery information sought of

the College by Mrs. Geotzke in the Ben Hill Superior Court action is of a type which this Court has consistently recognized as being protected from state-compelled disclosure. It is well settled constitutional law that the right of association enables persons to associate freely and privately in the exercise of first amendment rights (such as supporting religious educational institutions) and the organizations they form to resist state instigated or compelled inquiries as to who are its members, what are the sources of its income, and to what end these funds are expended. NAACP v. Alabama, 357 U.S. 449 (1958); Bates v. City of Little Rock, 361 U.S. 516 (1960); Gibson v. Florida Legislative Investigation Committee, 372 U.S. 539 (1963); Britt v. Superior Court of San Diego County, 20 Cal. 3d 844, 574 P.2d 766, 143 Cal. Rptr. 695

(1978).

Without questioning the obvious religious standing of Ambassador College as the type of organization entitled to protection offered by the first amendment against state-compelled disclosure and without disputing that the type of information sought to be discovered in this case is of a type which is protected against state-compelled disclosure by the first amendment, the Court below nonetheless erroneously holds that Ambassador College has no right of free exercise of religion to resist discovery in civil litigation proceedings where the issue involved is a secular dispute and there is no danger of governmental monitoring or potential for regulating religious activity:

> "There is no danger of government seeking to monitor or regulate a religious group. Indeed, the only government involvement in this case at all is the Georgia trial court's

> enforcement of the discovery order. We find that there are simply no free exercise considerations of even arguable validity raised by Ambassador College." Ambassador College v. Geotzke, 675 F.2d at 664.

This holding by the Court below is nothing short of a total abandonment of the time-honored principles enunciated by this Court that first amendment freedoms, ". . . are protected not only against heavy-handed frontal attack, but also from being stifled by more subtle governmental interference" Bates v. City of Little Rock, 361 U.S. at 523 and that any ". . . state action which may have the effect of curtailing the freedom to associate is subject to the closest scrutiny." NAACP v. Alabama, 357 U.S. at 461. (emphasis supplied). As succinctly put by Justice Tobriner of the Supreme Court of California:

> "Our decision in the present case breaks no new constitutional ground. As we have explained, it has been clear for over two decades that the

> First Amendment provides substantial protection of an individual's interest in associational privacy in that it places severe restrictions on state-compelled disclosure of private affiliations and activities. The present decision simply recognizes that these firmly established constitutional precepts cannot be ignored merely because the issue of compelled disclosure arises in the context of litigation discovery; in this realm, as in all others, such disclosure of confidential associational affiliations and activities must be justified by a compelling state interest and must be precisely tailored to avoid undue enfringement of constitutional rights." Britt v. Superior Court of San Diego County, 574 P.2d at 779.

Furthermore, the threat to first amendment freedoms may be even more severe in the civil litigation discovery context, regardless of governmental entanglement:

> "This chilling effect on First Amendment rights is not diminished simply because disclosure is compelled pursuant to a litigation-oriented discovery order. Indeed, in some respects, the threat to First Amendment rights may be more severe in a discovery context, since the party directing the inquiry is a litigation adversary who may well attempt to harass his opponent and gain strategic advantage by probing deeply into areas which an individual

may prefer to keep confidential." Id. at 774.

Indeed, considering the importance of private fund raising to the very existence of private church-related education in this country, it is readily apparent that the potential danger to first amendment freedoms by state-compelled disclosure by a church-related college of information protected by the first amendment is quite the same regardless of whether the party seeking disclosure is a governmental entity which could use the information to regulate or monitor a church group or whether the party seeking disclosure is a private party engaged in a purely secular dispute.

Private fund raising is and must be the primary source of support for private education. As such, it goes without saying that the rights of con-

tributors to private education to make their gifts in complete confidence must be protected.

It is most improbable therefore that any church or church-related educational institution, would be willing to turn over a list of persons who have bequeathed property to the church or church-related school or disclose financial information of questionable relevance about its officers. If there is to be compulsory disclosure of such information in civil litigation discovery proceedings without any protection afforded to churches and schools in the form of requiring the party seeking discovery to make a showing of compelling necessity, case after case would end in automatic judgments for plaintiffs as the churches and schools would certainly refuse to allow harassments of their donors.

Clearly, the first amendment freedoms of religion and associational privacy stand as protectors of the churches, schools, and their contributors against parties whose only objective is to harass their opponents into submission through pervasive discovery of marginally relevant and highly sensitive data. At issue is the fund-raising capabilities and thus the very life of many church-related colleges and universities.

In short, the real danger is state-compelled disclosure, regardless of the status of the party seeking disclosure or his purpose. The fundamental goals of free expression of ideas and exploration of alternatives is equally at stake whether the party seeking disclosure is a private party in a purely secular dispute or, on the other hand, is a governmental entity

seeking to regulate and monitor a religious group. If these goals are to be attained and protected, our Constitution simply cannot tolerate a recognition of a privilege against compulsory disclosure in one instance and not the other.

A. Are Associational Relationships of Religious Organizations Presumptively Entitled to First Amendment Protection or Must the Entity Asserting the Right Overcome Some Threshold Substantiation Requirement?

A focal point for the Court below in reaching its decision that Ambassador College has presented no colorable first amendment claim was its conclusion that "Ambassador College has not demonstrated how its religious liberty would be enfringed upon if it is required to answer the questions put to it." Ambassador College v. Geotzke, 675 F.2d at 664. This too flies in the face of settled constitutional principles.

The free exercise and associational privacy freedoms asserted by Ambassador College ". . . are presumptively immune from inquisition . . ." Sweezy v. New Hampshire, 354 U.S. 234, 265-266, 77 S.Ct. 1203, 1219, 1 L.Ed. 2d 1311 (1957) (Frankfurter, J. concurring), and the party seeking the disclosure always bears the burden of demonstrating its justification. See, e.g., Baird v. State Bar of Arizona, 401 U.S. 1, 6-7, 91 S.Ct. 702 27 L.Ed. 2d 639 (1971). See also Bursey v. United States, 466 F.2d 1059, 1082 (9th Cir. 1972) ("The burden rests on the government to establish that the particular [protected] relationships are outside its reach."); Surinach v. Pesquera de Busquets, 604 F.2d 73, 75 (1st Cir. 1979) (The state must show that its practices will "not ultimately enfringe upon and entangle it in the affairs of the religion to an extent

which the Constitution will not countenance.")

Thus, it is clear error for the Court below to place any burden on Ambassador College to prove that compelling discovery of the information requested will unduly enfringe upon its constitutional freedoms. The burden remains on Mrs. Geotzke to prove that it will not and no such showing has ever been made.

B. What Showing Must a Party Seeking Discovery in Civil Litigation Make in Order to Outweigh His Opponents First Amendment Interest?

This Court has consistently held that although the right of associational privacy is not absolute, it can be overcome only by a showing by the State of a subordinating interest which is compelling Buckley v. Valeo, 424 U.S. at 25; Bates v. City of Little Rock, 361 U.S. at 524.

Although the response of the lower federal and state courts as to how the party seeking discovery goes about showing this compelling interest has been varied and confusing, specific steps are now emerging in lower federal court decisions for determining whether a civil litigant has made a sufficient showing of necessity. These include:

(1) Can the information be discovered through alternative sources and has the party seeking disclosure made reasonable attempts to obtain the information elsewhere;

(2) Does the information go to the heart of the lawsuit;

(3) Whether the information is of certain relevance; and

(4) What type of controversy is involved.

See International Union v. National Right to Work Legal Defense and

Education Foundation, Inc., 590 F.2d 1139 (D.C. Cir. 1978); Silkwood v. Kerr-McGee Corporation, 563 F.2d 433 (10th Cir. 1977); Carey v. Hume, 492 F.2d 631 (D.C. Cir. 1974); Garland v. Torre, 259 F.2d 545 (2nd Cir. 1958); Cervantes v. Time, Inc., 464 F.2d 986 (8th Cir. 1972); Zerilli v. Smith, 656 F.2d 705 (D.C. Cir. 1981).

If certiorari is granted, we will argue that as a minimum, this Court should now impose a national standard of strong and overwhelming need as in the case of the federal decisions cited above. It is conceded that in an appropriate case, a showing of necessity may very well outweigh a litigant's constitutional freedoms. On the other hand, in other cases, the strongest possible showing of need may not be sufficient to justify or outweigh the chilling effect on first amendment rights that disclo-

sure would produce.

In any event, absent any showing by a civil litigant when a proper constitutional objection to discovery is asserted, as in the case at bar, a civil litigant should not be allowed to have free and unchecked reign to harass an opponent into submission by simply causing the opponent to insist upon its constitutional freedoms. Not only would such a scheme be contrary to the very basic idea of judicial fair play, but, as in the instant case, where the party resisting discovery is a church-related school, such a practice could have profound impact on such an institution's basic right to exist.

CONCLUSION

We respectfully urge the Court, for all the reasons set forth above, to

grant a Writ of Certiorari and to reverse the decision below.

Respectfully submitted,

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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
AMERICUS DIVISION

AMBASSADOR COLLEGE,

Plaintiff,

v. CIVIL ACTION NO.
80-10-AMER
SALLY J. GEOTZKE, et al.,

Defendants.

RULING ON DEFENDANT'S MOTION TO DISMISS

Ambassador College, dissatisfied with a default judgment entered against it in the Superior Court of Ben Hill County for its wilful refusal to obey an order to compel discovery, appealed to the Georgia Supreme Court which affirmed the trial court. Ambassador College v. Geotzke, 244 Ga. 322, ____S.E.2d _____ (1979). It then petitioned for a writ of certiorari to the United States Supreme Court which denied the writ. 62 L.Ed.2d 762 (1980). The college thereupon filed this civil

rights suit to declare the state court judgment unconstitutional as violative of its right to due process of the law and its right to free exercise of religion and freedom of association. The defendants move to dismiss the complaint.

Despite the civil rights form of this suit, the college is in reality inviting this court to review and reverse a final judgment of the Georgia Supreme Court. The jurisdiction to review judgments of the highest court of the state involved questions of federal laws or the federal Constitution is reserved to the United States Supreme Court by appeal or writ of certiorari. Sawyer v. Overton, 595 F.2d 1192 (5 Cir. 1977); 28 U.S.C.A. § 1257. "[F]ederal district courts do not have jurisdiction under 42 U.S.C. § 1983 or any other theory to reverse

or modify the judgments of state courts." Lampkin-Asam v. Supreme Court of Florida, 601 F.2d 760 (5 Cir. 1979), cert denied, ____U.S. _____, 100 S.Ct. 662, 62 L.Ed.2d 642 (1980).

Accordingly, the motions to dismiss the complaint are granted.

SO ORDERED, this 30th day of May, 1980.

/s/ Wilbur D. Owens, Jr.
Wilbur D. Owens, Jr.
United States District Judge

AMBASSADOR COLLEGE,
Plaintiff-Appellant,

v.

SALLY J. GEOTZKE, etc., et al.,
Defendants-Appellees.

Fifth Circuit.

Unit B

May 6, 1982

Before TUTTLE, HILL and THOMAS A. CLARK, Circuit Judges.

THOMAS A. CLARK, Circuit Judge:

In February 1975, Madeline Hopkins Shaffer executed a deed and real estate trust agreement. This deed and trust agreement provided that upon her death title to her home would pass to Joseph Pope and Willard McMillan as trustees for Ambassador College. Mrs. Shaffer died in June 1978. The deed and trust agreement were recorded in July 1978. Shortly thereafter, Pope and McMillan quitclaimed their interest in the property to Ambassador College.

Sally Geotzke, the daughter and

sole heir of Mrs. Shaffer, then brought suit against Ambassador College and the two trustees in the Superior Court of Ben Hill County, Georgia. She sought the cancellation of the deed on the grounds, inter alia, of the mental incapacity of Mrs. Shaffer, undue influence, and fraudulent misrepresentation.

The discovery process then began. Geotzke filed seventeen interrogatories and six requests for production of documents. Ambassador College refused to respond to many of these interrogatories and requests for production of documents. In substance, the information that Ambassador College refused to produce consisted of:

(1) The names and information of persons in Georgia who have conveyed property by deed or trust agreement to Ambassador College, or have executed a will devising property to Ambassador College.

(2) The amount of annual compensation paid to officers, directors, and members of the boards of trustees of Ambassador College and the Worldwide Church of God.

(3) The gross revenues of Ambassador College for the years 1974-75.

(4) The compensation paid to Herbert W. Armstrong by Ambassador College and the Worldwide Church of God for the years 1974-77.

Ambassador College based its objections to these questions on first amendment considerations. Ambassador College is endowed and supported by the Worldwide Church of God. It also acts as the seminary of the church.

Shortly after receiving the college's answer, Geotzke filed a motion to compel discovery. A hearing was held on the motion and the court entered an order sustaining Ambassador College's objections to some of the

questions and ordering the remainder, in substance listed above, to be answered. Ambassador College refused to comply with this order.

The state trial court then received from Geotzke a motion for imposition of sanctions. Ambassador College, after a hearing on this motion failed to persuade the trial judge and judgment was thereafter entered against it as a sanction, as requested by the appellee.

Ambassador College then appealed to the Georgia Supreme Court. That court upheld the trial court ruling. Ambassador College v. Geotzke, 244 Ga. 322, 260 S.E.2d 27 (1979). The Georgia court did not rule on Ambassador College's constitutional claim, rather it affirmed on the basis of the Georgia statute. (Ga. Code Ann. § 81A-126) dealing with the relevancy of information sought in discovery.

The appellant then petitioned the United States Supreme Court for a writ of certiorari, which was denied. Ambassador College v. Geotzke, 444 U.S. 1079, 100 S.Ct. 1029, 62 L.Ed.2d 762 (1980).

Ambassador College then filed an action in the Middle District of Georgia under 42 U.S.C. § 1983. It sought a declaratory judgment that the judgment against it entered by the Georgia trial court was unconstitutional. Further, the college sought a permanent injunction against the appellees from enforcing the judgment or taking any action with respect to the property in question. The district court dismissed the complaint on the grounds that it lacked subject matter jurisdiction. This appeal followed.

This case presents a difficult jurisdictional issue. At the core of the jurisdictional question is whether

Ambassador College has a colorable first amendment claim. If no such claim is present, we need not consider whether the district court had jurisdiction to determine if the Georgia court denied the appellant a due process right by refusing to address the constitutional claim. We hold that Ambassador College has presented no substantial first amendment claim and therefore affirm the district court's dismissal of the action.

The appellant maintains that the Georgia trial court's order compelling discovery infringed upon its constitutional freedom of "religion" (presumeably stemming from the free exercise clause). It relies primarily upon Surinach v. Pesquers de Busquets, 604 F.2d 83 (1st Cir. 1979), for the proposition that any investigation into church-related schools may only be conducted after a balancing of

interests involved, with the burden upon the party seeking discovery to prove that the information sought would not infringe upon the free exercise of religion. We do not see Surinach as being relevant to the instant case.

Surinach involved an attempt by the Commonwealth of Puerto Rico to investigate the operating costs of Catholic schools there. In doing so, the Puerto Rican officials were operating pursuant to a statute designed to stem inflation. Under this statute, such an investigation was necessary before price controls could be established. It logically followed that the Puerto Rican government was considering the imposition of price controls over Catholic schools. Further, there existed potentional for continuous government monitoring over those schools. Thus, the court could

not separate the information-gathering at issue from the ultimate purpose of imposing price controls over the Catholic schools. The imposition of such price controls, the court found, would be constitutionally impermissible. Therefore, it quashed the subpoenas issued by the Puerto Rican government inquiring into the schools' finances.

The First Circuit has viewed Surinach in a very narrow light. In United States v. Freedom Church, 613 F.2d 316, 320 (1st Cir. 1979), it rejected a claim that requests for documents by the government constituted an impermissible entanglement of church and state. The court stated that where found, such as in Surinach, "it has been in the government's continuing monitoring or potential for regulating the religious activities under scrutiny." 613 F.2d at 320. The

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court held that where the Internal Revenue Service sought to gather information about the church in question, in order to make a determination of the church's tax exempt status, there was no violation of the free exercise clause. There existed no attempt on the part of the IRS to "regulate or in any way become involved in the religious activities or control the financial matters of the church." 613 F.2d at 320. Therefore, the government's summons inquiring into the church's financial matters was enforced as no first amendment rights were involved. It should also be noted that this circuit in United States v. Holmes, 614 F.2d 985 (5th Cir. 1980), has stated that a properly drawn IRS summons may be enforced over a church's free exercise privilege claim.

In all the cases heretofore discussed, the government has been a

party. This is not the case in the present action. We are faced with the scenario of a church and an individual contesting the validity of a gift by deed. There is no danger of government seeking to monitor or regulate a religious group. Indeed, the only government involvement in this case at all is the Georgia trial court's enforcement of the discovery order. We find that there are simply no free exercise considerations of even arguable validity raised by Ambassador College. Ambassador College has not demonstrated how its religious liberty would be infringed upon if it is required to answer the questions put to it. The object of Mrs. Geotzke's lawsuit is to determine whether fraud or undue influence induced her mother's gift to the church. As stated in Holmes, supra, conduct of a church is subject to regulation for protection of society:

> Free exercise of religion, as

it is encapsulated in the First Amendment, embraces two concepts - freedom to believe and freedom to act. The first is absolute, but the second remains subject to regulation for the protection of society. Cantwell v. Connecticut, 310 U.S. 296, 303-04, 60 S.Ct. 900, 903, 84 L.Ed. 1213 (1940). We are not concerned here with the former; Holmes and other congregation members remain unimpeded in the cerebral sphere. The sole issue is whether the Church may refrain from producing documents under a narrowed court order. There is no doubt that this constitutes conduct.

614 F.2d at 989.

In the instant case, certain church members may have been overzealous in their efforts to finance a seminary. Their actions may have been overreaching and they may have committed a fraud. Thus, the church

must respond to discovery requests, as any other similarly situated litigant would be required. As the Supreme Court stated in Cantwell v. Connecticut, 310 U.S. 296, 306, 60 S.Ct. 900, 904, 84 L.Ed. 1213 (1940), "Nothing we have said is intended even remotely to imply that, under the cloak of religion, persons may, with impunity, commit frauds upon the public." In the instant case, the appellants are accused of taking questionable actions, bordering upon fraud. The raising of a first amendment right does not require a balancing test of the interests involved in discovery.

The appellant cites Kedroff v. St. Nicholas Cathedral, 344 U.S. 94, 73 S.Ct. 143, 97 L.Ed. 120 (1952) and Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696, 96 S.Ct. 2372, 2373, 49 L.Ed.2d 151 (1976)

in support of its position. These cases are however, inapposite to the present inquiry. Though these cases did involve private parties attempting to sue churches, they are fundamentally different from the instant dispute. As Justice Rehniquist pointed out in General Council on Finance and Administration of the United Methodist Church v. Superior Court of California, County of San Diego, 439 U.S. 1355, 99 S.Ct. 35, 58 L.Ed.2d 63 (Rehnquist, Circuit Justice, 1978), "those cases are premised on a perceived danger that in resolving intrachurch disputes the State will become entangled in essentially religious controversies or intervene on behalf of groups espousing particular doctrinal beliefs. [Citations omitted.] Such considerations are not applicable to purely secular disputes between third parties and a particular

defendant . . . in which fraud, breach of contract, and statutory violations are alleged." 439 U.S. at 1373, 99 S.Ct. at 38. Here we do not have a struggle over who will be the Russian Orthodox Archbishop of North America and the Aleutian Islands as in Kedroff, or over who has the power to restructure the Serbian Orthodox dioceses in North America as in Milivojevich. Rather, we have a purely secular dispute between Ambassador College and Geotzke. Thus, these cases do not aid Ambassador College. There exists no colorable claim under the free exercise clause.

Ambassador College also raises the claim that first amendment associational rights are infringed by the Georgia court order. In support of this position, the appellant cites Gibson v. Florida Legislative Investigation Committee, 372 U.S. 539, 83 S.Ct. 889,

9 L.Ed.2d 929 (1963); Bates v. City of Little Rock, 361 U.S. 516, 80 S.Ct. 412, 4 L.Ed.2d 480 (1960); and NAACP v. Alabama, 357 U.S. 449, 78 S.Ct. 1163, 2 L.Ed.2d 1488 (1958). These cases are readily distinguishable. They all involved governmental investigation into the NAACP, the goal of which was to obtain membership lists. Given the political climate of those times, the information obtained would probably have been used to "chill" membership in the organization. We are not faced with this sort of scenario in the instant case. The appellees are seeking, inter alia, a list of persons who have donated land to Ambassador College. This information is relevant, as it could lead to information regarding whether the Worldwide Church of God has engaged in a pattern of improper conduct. There is no attempt to regulate or in

any way become involved in the religious activities or control the financial matters of the church. Nor is there any likelihood that the release of this information will "chill" membership in the church. Thus, we reject the associational rights argument.

Since there are no colorable religious freedom or associational rights in question, no balancing test (as suggested in Buckley v. Valeo, 424 U.S. 1, 96 S.Ct. 612, 46 L.Ed.2d 659 (1976)) between these rights and the needs of Geotzke need be made. Thus we reject the contentions of Ambassador College on this score.

We note that we have reached this result because some of the questions addressed to Ambassador College were relevant and fell outside of the protection of the Free Exercise Clause. Therefore, they should have been answered. We acknowledge that some of

the questions propounded arguably appear to implicate constitutional protections. Further, this court believes those questions to be irrelevant. Were those questions alone presented to this court, we would be required to take a closer look at whether the district court had jurisdiction of this case. Trial courts should always be careful to screen out irrelevant, broad based discovery when the answers might implicate constitutional rights of a party.

AFFIRMED.

HILL, Circuit Judge, specially concurring:

In my view, principles of preclusion prevent a federal district court from entertaining the merits of a § 1983 complaint which asserts that the issues have been finally resolved against the complainant in a state court of competent jurisdiction even though it be alleged

that, had the state court correctly adjudicated the issues, the complainant would have prevailed.

The asserted First Amendment objection to discovery was submitted to the state trial court, the Superior Court of Ben Hill County, Georgia. That court had personal subject matter jurisdiction. The ruling adverse to appellant was appealed to the Georgia Supreme Court which affirmed.[1] The Supreme Court of the United States declined to grant the writ of certiorari.

The issue before us is adequately

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[1] Our panel holds that the state judicial system ruled correctly, supplying an opinion which, had the Georgia Supreme Court thought it necessary, might have been added to its own. Ambassador College v. Geotzke, 244 Ga. 322, 260 S.E.2d 27 (1979). That court produces more written opinions than any other court of last resort in the nation. West Publishing Co. (unpublished report). It is not remarkable that it does not so extensively address non-meritorious assertions in its reasons for judgment.

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controlled by Bradford v. Bronner, 665 F.2d 680 (5th Cir. 1982) (Clark, J.). It is conceivable that a claim under § 1983 might be stated where the injury complained of resulted from state court action, see Southern Jam v. Robinson, slip op. pp. 15085, 15088, n.7, _____F.2d _____, _____, n.7 (5th Cir. 1982), but no such case appears here.

While I agree that the case was correctly decided by the state court, I feel it to be an inappropriate presumption on our part to pass judgment upon it. Whether the case came out correctly or not in the state system, the claim asserted in the district court was properly dismissed.

I concur in the judgment affirming the judgment of the district court dismissing the complaint.

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 80-7479

D.C. Docket No. CA80-0010-AMER

AMBASSADOR COLLEGE,

Plaintiff-Appellant,

versus

SALLY J. GEOTZKE, ETC., ET AL.,

Defendants-Appellees.

Appeal from the United States District Court for the Middle District of Georgia

---

Before TUTTLE, HILL and THOMAS A. CLARK, Circuit Judges.

J U D G M E N T

This cause came on to be heard on the transcript of the record from the United States District Court for the Middle District of Georgia; and was argued by counsel;

ON CONSIDERATION WHEREOF, it is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause to be and the same is hereby AFFIRMED;

It is further ordered that plaintiff-appellant pay to defendants-appellees, the costs on appeal to be taxed by the Clerk of this Court.

May 6, 1982

ISSUED AS MANDATE:

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 80-7479

AMBASSADOR COLLEGE,

Plaintiff-Appellant,

versus

SALLY J. GEOTZKE, etc., et al.,

Defendants-Appellees.

Appeal from the United States District Court for the Middle District of Georgia

---

ON PETITION FOR REHEARING AND SUGGESTION FOR REHEARING EN BANC

(Opinion May 6, 1982, 11 Cir., 198_, _____F.2d_____).

( )

Before TUTTLE, HILL and CLARK, Circuit Judges.

PER CURIAM:

(X) The Petition for Rehearing is DENIED and no member of this panel nor Judge in regular active service on the

Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure; Eleventh Circuit Rule 26), the suggestion for Rehearing En Banc is DENIED.

ENTERED FOR THE COURT:

/s/ Thomas A. Clark
United States Circuit Judge

Filed June 4, 1982

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FILED
AUG 19 1982
ALEXANDER L. STEVAS,
CLERK

No. 82-136

In the Supreme Court of the United States

October Term, 1982

AMBASSADOR COLLEGE,
Petitioner,

vs.

SALLY J. GEOTZKE, etc., et al.,
Respondents.

BRIEF OF RESPONDENT SALLY J. GEOTZKE IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

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QUESTION PRESENTED

Do the United States district courts have subject matter jurisdiction to review and reverse the judgment of the highest court of a state?

PARTIES TO THE PROCEEDING

The parties to the case in the United States Court of Appeals for the Eleventh Circuit were as follows:

Petitioner: Ambassador College, a California Corporation.

Respondents: Sally J. Geotzke; Honorable Hardy Gregory, Jr.; Honorable Audrey D. Jordan; and the Superior Court of Ben Hill County, Georgia.

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No. 82-136

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OPINIONS BELOW

The opinion of the United States Court of Appeals for the Eleventh Circuit is reported at 675 F.2d 662 (11th Cir. 1982).

STATEMENT OF THE CASE

Proceedings Below

After unsuccessfully seeking a writ of certiorari from this Court to the Supreme Court of Georgia with regard to a judgment of said Court, Ambassador College brought this action against Sally J. Geotzke, the Honorable Hardy Gregory, Jr., the Honorable Audrey D. Jordan, and the

Superior Court of Ben Hill County, Georgia seeking injunctive and declaratory relief with regard to the enforcement of a judgment entered against Ambassador College in the Superior Court of Ben Hill County. All defendants below filed motions to dismiss on the ground that the court lacked subject matter jurisdiction. The District Judge, Honorable Wilbur D. Owens, Jr., determined that the District Court lacked subject matter jurisdiction to review and reverse a final judgment of the Georgia Supreme Court and accordingly, the defendants' motions to dismiss were granted and judgment was entered thereon. Ambassador College then filed its appeal to the former United States Court of Appeals for the Fifth Circuit which affirmed the dismissal by the District Court. Ambassador College then filed its petition for writ of certiorari in this honorable Court.

Statement of Facts

In February of 1975, respondent Sally J. Geotzke's mother, Madeline Hopkins Shaffer, executed a "deed and real estate trust agreement" under which she conveyed her home place to two individuals as trustees for Ambassador College. The deed and trust agreement was not recorded, however, until July 7, 1978, in excess of three years after its execution and less than one month after the death of Madeline Hopkins Shaffer. Shortly thereafter, the two trustees quitclaimed any interest they had in the property to Ambassador College.

Upon learning of the existence of the above referenced deeds, Sally J. Geotzke, a respondent herein and the daughter and sole heir at law of Madeline Hopkins Shaffer, brought suit against Ambassador College and the two trustees seeking cancellation of the above referenced deeds as a cloud upon the title of the said property on several

grounds, including mental incapacity, lack of mental ability coupled with inadequate consideration and fraudulent misrepresentation, undue influence, unconscionability, and the testamentary character of the real estate deed and trust agreement. The complaint was filed on September 8, 1978, as Civil Action File Number 1615 in the Superior Court of Ben Hill County, Georgia, and an order that Ambassador College be served by publication was duly entered on the same day.

Attached to and as part of her complaint, Sally Geotzke also filed seventeen enumerated interrogatories and six requests for production of documents directed to Ambassador College.

Although the order for service by publication and certificate of mailing were dated September 8, 1978, Ambassador College did not file any response to said interrogatories or requests for production of documents until October 27, 1978, 49 days after the date of service. The responses of Ambassador College to said interrogatories and requests for production of documents totalled some 71 pages and with the exception of partial and incomplete answers to interrogatories 4, 6, 14, and 15 and with the exception of requests for production of documents number 1, Ambassador College failed and refused to answer any of said interrogatories or produce any of said documents, and instead filed lengthy objections thereto. Thereafter, on November 6, 1978, Ambassador College filed its answer to the complaint of Sally J. Geotzke.

On November 17, 1978, Sally J. Geotzke filed her motion for order to make discovery with regard to the above interrogatories and requests for production of documents, and said motion was set for hearing on December 12, 1978. The matter was heard by the Court at said time and although the burden of proving the validity of the objections

was upon Ambassador College, Ambassador College failed to produce any evidence whatsoever. Nevertheless, the trial court painstakingly considered those objections that could be considered on their face without substantiation by the production of evidence, and on January 15, 1979, entered a detailed order sustaining the objection of Ambassador College that certain of said interrogatories and requests for production of documents were overly broad and ordering the remainder answered or produced within 30 days of the date of the order.

Although the court ordered Ambassador College to answer interrogatories 1, 2, 3, 4, 5, 7, 8, 9, 12, 17, and parts of 15, and ordered Ambassador College to produce the documents requested in request number 6, Ambassador College only partially and incompletely answered interrogatories numbers 4, 7, 8, 9, and 17, still failing and refusing to answer the remaining interrogatories or produce the documents as ordered by the court.

Thereafter, on the 21st day of February, 1979, Sally Geotzke filed her motion for imposition of sanctions under which she specifically requested that the court grant her judgment for all the relief prayed for in her complaint due to Ambassador College's continued willful failure to comply with the order of the court regarding said discovery.

The motion for imposition of sanctions was heard by the court on the 9th day of March, 1979, and on the 15th day of March 1979, and again Ambassador College failed to produce any evidence whatsoever in substantiation of its objections, and thereafter, on March 21, 1979, the court entered an order finding that Ambassador College had willfully failed and refused to comply with the previous order of the court entered on the 15th day of January, 1979, and ordered that Sally Geotzke's motion for sanctions be granted and that Sally Geotzke have judgment

against Ambassador College for the relief prayed for unless Ambassador College filed answers and produced documents as required by said order on or before March 30, 1979.

In spite of the fact that 204 days had passed since the date of service of said interrogatories and requests for production of documents upon Ambassador College, and in spite of the fact that Ambassador College had been granted additional time to answer said interrogatories and comply with said requests for production on two separate occasions by order of the court, said Ambassador College still failed and refused to answer said interrogatories or to produce said documents as ordered by the court and thereafter on April 2, 1979, Sally J. Geotzke filed her motion for order for judgment based upon said continued willful failure to comply upon the part of Ambassador College. The matter was heard by the court on April 9, 1979, and on April 10, 1979, the court entered judgment in favor of Sally J. Geotzke finding that Ambassador College had willfully failed and refused to carry out the terms of the previous orders of the court and the court thereupon ordered the deeds cancelled as a cloud upon the title of Sally J. Geotzke, as prayed for in her complaint.

Ambassador College thereupon appealed to the Supreme Court of Georgia and the cause was argued before said court on July 11, 1979. In argument, Ambassador College discussed the objections to the interrogatories, relying mainly on its objection that the same were irrelevant to the subject matter of the action and not reasonably calculated to lead to the discovery of admissible evidence. Sally J. Geotzke argued that the objections of Ambassador College were not timely filed and therefore could not be considered, and further argued that even if they were timely filed, no evidence was presented to

substantiate that Ambassador College was entitled to any constitutional protection whatsoever. The Supreme Court of Georgia, in an opinion reported at 244 Ga. 322, 260 S.E.2d 27 (1979), affirmed the judgment of the trial court. Thereafter, Ambassador College petitioned this Court for a writ of certiorari arguing that the Supreme Court of Georgia "ignored" its constitutional objections and treated the same as going to the admissibility of the information sought rather than its production in the first place. Sally J. Geotzke contended, however, that a careful reading of the opinion of the Supreme Court of Georgia showed that the Supreme Court of Georgia did not decide the constitutional questions raised but rather affirmed the trial court on independent and adequate non-federal grounds. Sally Geotzke further argued that Ambassador College failed to present a substantial federal question for Supreme Court review. This Court denied the petition for a writ of certiorari on February 19, 1980 (*Ambassador College v. Geotzke*, 444 U.S. 1079 (1980)).

Ambassador College then filed this action in the United States District Court for the Middle District of Georgia cast as a "civil rights" complaint and essentially requested the District Court review and reverse the final judgment of the Supreme Court of Georgia on grounds that were fully and fairly litigated in both the trial court and the Supreme Court of Georgia, and which have previously and finally been presented to this Court for review. The District Court dismissed the action for lack of subject matter jurisdiction, and Ambassador College thereupon appealed to the former United States Court of Appeals for the Fifth Circuit. That court, in an opinion reported as *Ambassador College v. Geotzke, et al.*, 675 F.2d 662 (11th Cir. 1982), affirmed the District Court's dismissal. Ambassador College thereafter filed its petition for writ of certiorari.

SUMMARY OF ARGUMENT

A United States district court lacks subject matter jurisdiction to review and reverse a final judgment of the highest court of a state. The jurisdiction to review judgments of the highest court of a state involving questions of federal laws or the federal Constitution is reserved to the United States Supreme Court by appeal or writ of certiorari. *Sawyer v. Overton*, 595 F.2d 252 (5th Cir. 1979); *Olivares v. Martin*, 555 F.2d 1192 (5th Cir. 1977); *Lampkin-Asam v. Supreme Court of Florida*, 601 F.2d 760 (5th Cir. 1979); *Coogan v. Cincinnati Bar Association*, 431 F.2d 1209 (9th Cir. 1970).

The legitimate religious standing of Ambassador College was in serious question throughout the state court proceedings. Ambassador College never properly presented its constitutional objections to the trial court, nor did Ambassador College make even a threshold showing of entitlement to the requested constitutional protections, and neither the trial court nor the Supreme Court of Georgia was required to provide Ambassador College with a specific ruling on the merits of each constitutional issue which Ambassador College attempted to raise.

ARGUMENT

The United States District Court for the Middle District of Georgia Lacked Subject Matter Jurisdiction of the Matter Presented in Ambassador College's Complaint, and the District Court Properly Dismissed the Action.

Respondent Sally J. Geotzke hastens to point out that this is not a typical injunction-declaratory judgment case wherein the plaintiff seeks to enjoin an on-going state

proceeding or to enjoin a threatened state proceeding, but rather this petition seeks to have the U.S. District Court review and reverse the final judgment of the Supreme Court of Georgia, after this Court has been presented the same opportunity, and declined to do so. Respondent Sally J. Geotzke shows that such a petition cannot properly be maintained, as more fully hereinafter appears.

State courts, like federal courts, are given the right and duty to decide federal questions and protect the rights of litigants under the Constitution of the United States. As stated in *Robb v. Connolly*, 111 U.S. 624; 28 L.Ed. 542 (1884):

> "Upon the State Courts, equally with the Courts of the Union, rest the obligation to guard, enforce, and protect every right granted or secured by the Constitution of the United States and the laws made in pursuance thereof, whenever these rights are involved in any suit or proceeding before them; for, the Judges of the State Courts are required to take an oath to support that Constitution, and they are bound by it and the laws of the United States made in pursuance thereof. . . . If they fail therein and withhold or deny rights, privileges or immunities secured by the Constitution and laws of the United States, the party aggrieved may bring the case from the highest court of the state in which the question could be decided, to this Court for *final* and *conclusive* determination." (Emphasis added) *Robb*, supra, 28 L.Ed. at 546.

Taking it as established that state courts have such duty and authority, the question then becomes whether a federal district court has subject matter jurisdiction to review decisions of federal law made by the highest state court following a denial of certiorari by the Supreme Court of the United States. Sally J. Geotzke respectfully

submits that the federal district court does not have such subject matter jurisdiction.

In the case at bar, Ambassador College cast its complaint in the form of a civil rights action, asking for both injunctive and declaratory judgment relief. Sally Geotzke shows, however, that Ambassador College was in fact simply seeking a review and reversal of the final judgment of the Supreme Court of Georgia in the preceding cause. It is well settled that federal district courts do not have jurisdiction under 42 U.S.C. § 1983 or any other theory to reverse or modify the judgments of state courts. *Lampkin-Asam v. Supreme Court of Florida*, 601 F.2d 760 (5th Cir. 1979).

Even if the state court had decided the case incorrectly, the United States District Court would still lack subject matter jurisdiction to entertain the plaintiff's complaint. As stated by Judge Hill in his special concurrence in the opinion below:

> "The asserted First Amendment objection to discovery was submitted to the state trial court, the Superior Court of Ben Hill County, Georgia. That court had personal and subject matter jurisdiction. The ruling adverse to appellant was appealed to the Georgia Supreme Court which affirmed. The Supreme Court of the United States declined to grant the writ of certiorari. . .
>
> . . . Whether the case came out correctly or not in the state system, the claim asserted in the district court was properly dismissed." *Ambassador College v. Geotzke*, 675 F.2d at 666, 667.

See also in this regard *Manufacturers Record Publishing Company v. Lurer*, 268 F.2d 187 (5th Cir. 1959); and also *Warriner v. Fink*, 307 F.2d 933 (5th Cir. 1962), where the court indicates that review of the judgment by the United

States Supreme Court is the only avenue of relief available in the federal courts under the circumstances such as are present in the case at bar. In this case, Ambassador College has availed itself of the opportunity to have the cause reviewed by the Supreme Court of the United States. The Supreme Court of the United States has turned Ambassador College down, and this should finally conclude the matter.

In *Sawyer v. Overton*, 595 F.2d 252 (5th Cir. 1979), a Florida attorney brought a civil rights action seeking declaratory and injunctive relief with regard to a judgment of the Florida Supreme Court ordering the attorney's suspension from the practice of law. The district court dismissed the civil rights action for lack of subject matter jurisdiction, and the Fifth Circuit affirmed, stating:

> "Among the several answers to plaintiff's claim, a basic and dispositive one is that we hold no warrant to review final judgments of the Florida Supreme Court. That power is reserved to the Supreme Court of the United States. Complaining of constitutional violations, Mr. Sawyer has cast his complaint in the form of a civil rights suit. What he seeks, however, is simply reversal of the state court judgment. . ." *Sawyer*, supra, 595 F.2d at 252.

Certainly, the United States District Court in this case had no warrant to review the final judgment of the Supreme Court of Georgia attacked in this case. As stated in *Coogan v. Cincinnati Bar Association*, 431 F.2d 1209 (9th Cir. 1970):

> "The Civil Rights Act was not designed to be used as a substitute for the right of appeal, or to collaterally attack a final judgment of the highest court of a state and relitigate the issues which it decided. . . The final judgment of the Supreme Court is conclusive and Coogan is precluded by the doctrine of res judicata

from relitigating not only the issues which were actually involved in the disbarment proceeding, but also the issues which he might have presented. . ." *Coogan*, supra, 431 F.2d at 1211.

It is readily apparent that in the case at bar all Ambassador College sought in reality was a review of an allegedly erroneous decision of the Supreme Court of Georgia. Ambassador College now asks this Court to authorize the District Court to review and reverse the cause, when this Court has previously refused to do so. The District Court certainly has no such subject matter jurisdiction, as such a review and possible reversal was solely and exclusively within the power of this Court when the case was first presented to this Court on petition for certiorari. The fact that Ambassador College also sought declaratory judgment relief has no effect on the outcome. See *Samuels v. Mackell*, 401 U.S. 66; 91 S.Ct. 764; 27 L.Ed. 2d 688 (1971). Since the District Court lacked subject matter jurisdiction to entertain Ambassador College's complaint, the same was properly dismissed.

In its Petition for Certiorari, Ambassador College begins its argument with the unsupported assertion that the obvious religious standing of Ambassador College and its entitlement to the constitutional protections asserted is not questioned, nor could it be. (See Petition, page 10). Sally Geotzke, shows, however, that this bold assertion is simply incorrect. As has been advanced in all five courts in which this matter has appeared, including the Superior Court of Ben Hill County, the very substance of the whole case, and in particular the object of the very discovery which Ambassador College refused to answer, was all directed to the status and validity of Ambassador College as a legitimate religious institution. It quite frankly defies comprehension that Ambassador College can now contend that Sally Geotzke was not challenging its church

related status. The true fact is that Ambassador College made absolutely no showing whatsoever by any competent evidence at any hearing in the Superior Court of Ben Hill County at any point in time that it was in any way entitled to any form of protection due to alleged religious connections. The main thrust of Geotzke's lawsuit and discovery was concerned with whether or not Ambassador College was in fact related to a religious organization at all, or whether Ambassador College and its associated entities were simply vehicles for financial gain for a selfish few. To allow a party against whom discovery is sought to avoid such discovery simply by stating that they are "church related" in a case where the very nature and extent of the relationship itself is the point in question, provides at best a circuitous procedure whereby the issue is simply avoided, and cannot be reached. Ambassador College once again argues, simply put, "One cannot find out what we are, because of what we are." Certainly, the Supreme Court of Georgia correctly concluded that some sort of threshold showing of the nature of the objecting entity could be required before considering the validity of the constitutional objections advanced by Ambassador College.

Ambassador College has had its day in court, and in fact has had numerous days in court. The matter should certainly end here. The very same arguments which Ambassador College has presented to this Court have previously been presented to the Superior Court of Ben Hill County, the Supreme Court of Georgia, the United States District Court for the Middle District of Georgia, the United States Court of Appeals for the Eleventh Circuit, and to this Court on its former petition for writ of certiorari. The present petition of Ambassador College addresses itself to the "merit" of its purported constitutional objections. The petition ignores the true issue, and that is at what points can the alleged "merits" be considered.

Respondent Sally Geotzke shows that the final point for consideration on the merits was upon consideration of the previous petition for writ of certiorari to this Court, and when that was denied, the matter ended once and for all, right or wrong. The writ of certiorari should therefore be denied.

CONCLUSION

All litigation must end somewhere. It is apparent that the petition in this case sought to have the District Court review and reverse the judgment of the Supreme Court of Georgia, an action which this Court has already refused to take. The District Court clearly lacks subject matter jurisdiction to entertain such a petition and furthermore the complaint shows on its face that the issues presented thereby are res judicata. The fact that Ambassador College contends that the Supreme Court of Georgia was wrong in its judgment or refused to entertain its constitutional arguments does not change the fact that Ambassador College has had its day in court.

The United States Court of Appeals for the Eleventh Circuit correctly affirmed the District Court's dismissal for lack of subject matter jurisdiction, and for these reasons and each and every reason presented above, Respondent Sally J. Geotzke respectfully requests that the writ of certiorari be denied.

Respectfully submitted,

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No. 82-136

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1981

AMBASSADOR COLLEGE,

Petitioner,

v.

SALLY J. GEOTZKE, etc., et al.,

Respondents.

PETITIONER'S REPLY MEMORANDUM

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1981
No. 82-136

AMBASSADOR COLLEGE,

Petitioner,

v.

SALLY J. GEOTZKE, ETC., ET AL.,

Respondents.

PETITIONER'S REPLY MEMORANDUM

The Brief for Respondent in Opposition makes several misleading or mistaken assertions to which a short reply is warranted:

1. Petitioner takes serious issue with the majority of the factual assertions set forth in respondents' brief, including, but not limited to, whether the Petitioner made a sufficient showing that it was entitled to assert its constitutional objections; whether the

objections were timely asserted; and whether petitioner is merely seeking a review and reversal of the final judgment of the Supreme Court of Georgia. Quite obviously, these are proper matters to be resolved by an examination of the record in the state court proceedings. The district court below rendered its decision on motions submitted by respondents prior to the filing of any defensive pleadings. Therefore, the only record on appeal in this case is that of the district court complaint, motions to dismiss and supportive briefs. Since this case reached the court below on an appeal from the grant of a Motion to Dismiss, the allegations in the complaint are deemed admitted by Respondents. Radovich v. National Football League, 352 U.S. 445 (1957).

2. The issue on this appeal is not whether the district court below lacks subject matter jurisdiction of the claims presented in petitioner's complaint. Indeed, the court below did not reach this question. Rather, the court of appeals held that as this was a purely secular dispute, petitioner had no colorable first amendment claim. Ambassador College v. Geotzke, 675 F.2d 662, 663 (1982). Nevertheless, Respondents totally unwarranted assertions on the jurisdictional issue can be treated in short order.

Petitioner agrees with Respondent that state courts, like federal courts, are given the right and duty to decide federal questions and protect the rights of litigants under the Constitution of the United States. However, when state courts fail in their duty to exercise

this authority so as to cause a litigant to suffer judgment solely for asserting and relying upon his constitutional freedoms, a different rule is required. The clear purpose of 42 U.S.C. § 1983 is to provide a remedy to an unsuccessful litigant under such circumstances; that is:

> . . . to interpose the federal courts between the states and the people, as guardians of the people's federal rights . . . to protect the people from unconstitutional action under color of state law, 'whether that action be executive, legislative or judicial.' Mitchum v. Foster, 407 U.S. 225, 242, 92 S.Ct. 2151, 2162, 32 L.Ed. 2d 705, 717 (1972). (Emphasis supplied)

Petitioner is fully aware of the cases cited by Respondent suggesting that federal district courts have no jurisdiction to review the judgment of a state court. Petitioner respectfully submits that these cases are concerned only with the exercise of jurisdiction rather than the pure existence of jurisdiction. Even

as to the exercise of jurisdiction, the cases cited by respondent are clearly distinguishable from our case since the state courts failed to acknowledge the existence of the constitutional issues raised by petitioner's complaint, the constitutional privilege itself, and the accompanying protections to be afforded a civil litigant that is resisting discovery by relying on a proper assertion of the privilege. Since the issues raised by Petitioner's complaint in this case have yet to be lawfully considered and adjudicated upon their merits, the district court does not lack subject matter jurisdiction even in the sense of the exercise rather than the existence of jurisdiction.

CONCLUSION

For the foregoing reasons, and for

the reasons stated in its earlier Petition, petitioner respectfully urges the Court to grant the Writ of Certiorari.

Respectfully submitted,

W. WARREN PLOWDEN, JR.

HUBERT C. LOVEIN, JR.

RALPH K. HELGE

BEN B. MILLS, JR.